

REPLY BRIEF NOTED

48679

/Ryan Walters/

10/06/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: : PATENT
:
Herbert BALTES et al. :
:
Serial No.: 10/540,011 : Art Unit: 3726
:
Filed: June 22, 2005 : Examiner: R. J. Walters
:
For: METHOD FOR THE PRODUCTION : Appeal No. _____
OF PISTON-TYPE ACCUMULATORS :

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. §41.41, Applicants-Appellants submit the following Reply Brief in response to the September 16, 2009 Examiner's Answer in connection with the appeal of the above-identified application.

Claim 11

The rejection of claim 11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,311,910 to Hasegawa is untenable since it is based on an incorrect interpretation of the subject matter of claim 11. That misinterpretation fails to recognize that the axial outer circumferential contact surface, as well as the axial outer surface portion, is of the first cover component. Clearly, both this contact surface and the outer surface portion are both parts of the

outer cover component, as specifically recited in claim 11 and as only disclosed in this application.

The misinterpretation does not constitute the broadest “reasonable” interpretation of the claim language. The applicants’ interpretation does not involve reading a limitation from the specification into the claim, as alleged on page 8 of the Examiner’s Answer. Rather, a reasonable interpretation of the claim requires that the axial outer circumferential contact surface be of the first cover component. No other interpretation of this claim terminology is reasonable.

Since the claim 11 requires that the axial outer circumferential contact surface, as well as the axial outer surface portion, be of the first cover component, the angled surface on the Hasegawa tool does not disclose or render obvious this claimed feature.

Claim 12

Relative to claim 12, the Examiner’s Answer on page 11 states that claim 12 does not require that the outer surface portion (with which the housing first longitudinal end is flush) be surrounded by an acutely angled contact surface. However, claim 12 is dependent upon claim 11. Claim 11 recites and requires “an axial outer circumferential contact surface extending at an acute angle relative to the longitudinal axis and about an axial outer surface portion of the first cover component...” (emphasis added) As properly interpreted, this quoted phrase requires, among other things, that the axial outer circumferential contact surface extends (1) at an acute angle relative to the longitudinal axis, and (2) about the axial outer surface portion, particularly due to the use of “circumferential” and “about”. When this claim language is properly interpreted, the allegedly unrecited limitation is in fact clearly and expressly recited in the language of claim 12. The rejection of claim 12 is improperly based on a misinterpretation of the

claim language that fails to give proper consideration to “circumferential” and to “about” in claim 11.

Claim 14

The rejection of claim 14 involves a misinterpretation of the claim language in failing to recognize that the contact surface is tapering, which contact surface is on the first cover component. Since first cover component tapers in an outward direction “along” the contact surface, that surface must also taper. No other reasonable interpretation exists.

Additionally, the rejection of claim 14 ignores the limitation that the tapering is in an outward direction. Since claim 11 refers in line 4 to “an interior of the housing,” the outward direction must be away from that interior, i.e., towards the outside. Thus, context is provided for this direction, contrary to the allegation contained on page 12 of the Examiner’s Answer.

Claim 15

Relative to claim 15, the Examiner’s Answer argues on page 12 that the axial force is inherent by the radial movement due to the acute angle of the forming tool. However, that axial force is not inherent in the Hasegawa lateral staking member 10 merely because there is an acute angle in the middle of that member. Insufficient analysis is provided to establish presence of an axial force in order to present a *prima facie* case of obviousness, rendering the rejection of claim 15 improper and reversible. The Hasegawa patent only discloses use of a lateral, non-axial force.

Claim 24

Contrary to the allegations made on the bottom of page 12 of the Examiner’s Answer, the Hasegawa portion 1b is not a free edge of its housing since it is spaced within the interior of that housing. A free end can only be the termination portion of the housing, as would be interpreted

by one of ordinary skill in this art. Merely stating that the Hasegawa portion 1b is free and is an end edge does not make it so. Since Hasegawa portion 1b of housing 1a is spaced from the housing longitudinal end, it cannot act as an insertion bevel since the cover is fully inserted within the housing when the cover contacts portion 1b. Thus, the allegation contained on the middle of page 5 of the Examiner's Answer that Hasegawa portion 1b acts as an insertion bevel is incorrect.

Claim 25

Relative to claim 25, the Examiner's Answer on page 13 merely refers to section 5a as being the sole part of the deformed section. However, both sections 5a and 5b in fact involve sections of the cover against which the housing is deformed in the Hasegawa patent. This misinterpretation of the Hasegawa patent renders the rejection of claim 25 improper and reversible.

Claim 17

On page 13 of the Examiner's Answer, the alleged obviousness of the modification is alleged to be based on knowledge within the level of ordinary skill in the art at the time the invention was made. However, no evidence or specific identification of that knowledge supporting the alleged obviousness is provided. This lack of evidence renders the rejection improper and reversible.

Claim 18

The alleged obviousness relative to claim 18, like the rejection of claim 17, lacks adequate evidence, and thus, fails to present a *prima facie* case of obviousness.

Claim 19

Claim 19 does not involve a mere duplication of parts in also involving locating a second shaping tool over a second longitudinal end such that the two tools operate on opposite ends and in opposite directions. Such novel and unobvious orientation of the two tools does not constitute a mere duplication of parts, as alleged on the bottom of page 14 of the Examiner's Answer.

Claim 26

Relative to claim 26, the Examiner's Answer on page 15 merely refers to section 5a as being the sole part of the deformed section. However, both sections 5a and 5b in fact involve sections of the cover against which the housing is deformed in the Hasegawa patent. This misinterpretation of the Hasegawa patent renders the rejection of claim 26 improper and reversible.

Claims 27 and 28

The argument contained on page 15 relative to claims 27 and 28 primarily referring to an obvious matter of design choice demonstrates the lack of the necessary evidence to support this rejection, rendering the rejection improper and reversible.

Claims 29 and 30

Relative to claims 29 and 30, the Examiner's Answer on pages 15-16 fails to recognize that claim 29 recites that the deformed section extends directly from the first longitudinal end and that claim 30 recites that each deformed section extends directly from the respective longitudinal end, where each deformed section is at an obtuse angle. No deformed section of the Hasegawa housing is both (1) at an obtuse angle and (2) at the longitudinal end, as required in these claims.

Any angled section of the Hasegawa housing is spaced from its longitudinal end. Thus, the rejections of claims 29 and 30 are untenable.

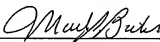
Claim 13

As noted above, claim 13 by its dependency on claim 11 requires that the axial outer surface portion be surrounded by an acutely angled contact surface for the reasons noted above relative to claim 12. Such reasons are not repeated to avoid burdening the record.

Conclusion

For the reasons presented in the Brief on Appeal and above, Applicants-Appellants submit that the rejections under 35 U.S.C. §102(b) and §103 are untenable, and request that these rejections be reversed.

Respectfully submitted,



Mark S. Bicks
Reg. No. 28,770

Roylance, Abrams, Berdo & Goodman, LLP
1300 19th Street, NW
Washington, DC 20036
(202) 659-9076

Dated: September 21, 2009